

JAN 29 2013

FCC Mail Room



Dr. John Ahlgrim  
Superintendent of Schools

Dr. Kristin Raitzer  
Asst. Supt. for Curriculum & Instruction

Dr. Carol Hincker  
Asst. Supt. for Special Services

January 24, 2013

Malene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th St., S.W.  
Washington, DC 20554

Please find enclosed our Letter of Appeal in response to the Administrator's Decision on Appeal dated December 5, 2012, for Funding Years 2008 and 2009, Funding Request Numbers 1755454, 1755495, 1755527, 1890106, 1890232, 1890293, 1890346, and 1890373, and Funds to be recovered: \$248,724.00 and \$352,760.00. We have retained the law firm of Hinshaw & Culbertson LLP to represent our District in this matter.

I have read the enclosed Letter of Appeal, agree with its contents, and certify that the information contained within is true, accurate and complete to the best of my knowledge and belief at this time.

Sincerely,

A handwritten signature in black ink, appearing to be "John Ahlgrim", written over a horizontal line.

Dr. John Ahlgrim  
Superintendent of Schools  
Zion Elementary School District 6  
[jahlgim@zion6.org](mailto:jahlgim@zion6.org)

# HINSHAW

& C U L B E R T S O N L L P

Received & Inspected

JAN 29 2013

FCC Mail Room

January 28, 2013

**Malene H. Dortch**  
**Secretary**  
**Federal Communications Commission**  
**445 12th St., S.W.**  
**Washington, DC 20554**

**ATTORNEYS AT LAW**

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**Re: REQUEST FOR REVIEW.**

**In The Matter of Administrator's Decision on Appeal dated December 5, 2012, For  
Funding Years 2008 and 2009, And Administrator's Decision on Appeal - Funding Year  
2008-2009 and 2009-2010.**

Appeal of Administrator's Decision on Appeal  
CC Docket No. 02-6; Docket No. 96-45  
Applicant Name: Zion Elementary School District 6  
Billed Entity Name: Zion Elementary School District 6  
Contact Persons: Anthony Ficarelli,  
Richard Kolodziej  
Hinshaw & Culbertson, LLP  
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Requesting Appeal From: Funding Commitment Decision Letters, dated February 2, 2010  
Billed Entity Number: 135356  
Funding Request Numbers: 1755454, 1755495, 1755527 and 1890106, 1890232, 1890293,  
1890346, 1890373  
Date of Funding Decision Commitment Letters: February 2, 2010.  
Date of Administrator's Decision on Appeal: December 5, 2012.  
Funds to be recovered: Funding Year 2008: \$248,724.00. Funding Year 2009: \$352,760.00

To Whom It May Concern:

Zion Elementary School District 6 (District 6), by their attorneys, Hinshaw & Culbertson, LLP, respectfully requests, pursuant to Sections 54.719 through 54.723 of the Commission's rules, that the Commission review and reverse the Universal Service Administrative Company ("USAC") decision on Appeal for Funding Years 2008-2009 and 2009-2010 and the associated

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USAC funding commitment decision of the above referenced FRN's. The original decision of the administrator was issued on February 2, 2010, the Administrator's Decision on Appeal was December 5, 2012. (See attachment, Exhibit A). For the reasons set forth herein, the Commission should grant Zion Elementary School District 6's appeal of the Administrator's Decision and remand the underlying funding application to USAC for immediate approval.

#### **I. Summary Of Issues On Review.**

On February 2, 2010, Zion Elementary School District 6, (hereinafter District 6) was served with correspondence entitled: "Funding Commitment Decision Letter. Funding Year 2008: July 1, 2008 - June 30, 2009," "Funding Commitment Decision Letter. Funding Year 2008: July 1, 2009 - June 30, 2010," and letters including a "Further Explanation of Administrator's Funding Decision." (See Exhibit E, copies of said correspondence, attached.)

In total, USAC denied funds totaling \$248,724.00, for funding year 2008, and funds totaling \$352,760.00, for funding year 2009.

First, District 6, will address the issues raised in the Administrator's Decision on Appeal for the funding years 2008-2009 and 2009-2010. The only issue raised by USAC in the Administrator's Decision is the issue of timeliness of the appeals. The original denials were made by USAC on February 2, 2010 and April 7, 2010. District 6 filed their first appeals to USAC on October 24, 2012. While this is beyond the sixty day limit set by the Commission Rules, District 6 will demonstrate that there was good cause for the delay.

District 6 will also address in this appeal the issues raised in the original denial correspondence. District 6 has recently resolved litigation with Net56, their service provider at the time. Included in this litigation was a request for Net56 to return nearly \$365,000 in reimbursements which the District had claimed were improperly withheld. District 6 paid the full amount of their contract price. Furthermore, and a significant reason for the settlement, there are orders and opinions that have come down from The Commission that directly impact the issues presented in this matter. The Commission has already ruled on the issues presented in this appeal, when it dealt with other appeals involving Net56. Three of those recent orders are attached to this correspondence as Exhibits B, C, and D.

USAC originally cited the following basis for their denial of funds, each of which will be addressed in detail below, and each of which have been already resolved by the Commission in the applicants favor in prior orders involving the same issues and provider as involved herein.

1)	Funding was requested for servers, which may have been eligible but for the manner in which Net56 employed the servers. The servers failed the Tennessee Order requirements and is not eligible for Priority One Reimbursement.
2)	Funding was requested for certain services which were not eligible services.

3)	That the wrong contract was provided for review.
4)	The all of the requests were determined not to be cost effective, and that the applicant failed to select the most cost effective approach, with price being the primary factor.

(See Exhibit E).

Furthermore, it should be noted that District 6 has filed appeals for COMAD requests by USAC for Funding Years 2005, 2006, 2007 and 2008. Those letters are dated September 8, 2011, and April 4, 2012. (See copies of the letters attached at Exhibit F and Exhibit G). The facts and arguments in those appeals should read together with this letter of appeal, as again they involve all of the same issues already ruled upon by The Commission in resolving other matters involving Net56.

## **II. Timeliness of The Appeal.**

While District 6 did not file their appeals from the denials for Funding Years 2008-2009 and 2009-2010 within the sixty day rule set by the Commission, the appeal should nevertheless be read as timely and USAC should not have denied the request. First, USAC is currently reviewing and seeking a return of funds for all prior funding years from District 6 where Net56 was their service provider (2005-2008). Furthermore, the issues presented in all of these COMAD requests and the original denials for funding years 2008-2009 and 2009-2010 are exactly the same. In fact, the reasons behind the COMAD requests are based solely on the denials of funding years 2008 and 2009. Additionally, there is a portion of Funding Year 2008 already on review with USAC; USAC has requested a return of the allowed funding of funding year 2008 (\$108,000.00 under FRN 1755420). Therefore, the Commission should waive the sixty day rule in this case for the funding denials of 2008 and 2009, so as to review all of these USAC decisions together. USAC has made the original denials timely as a result of their COMAD requests.

The issues presented are consistent throughout the funding years. Therefore, there is no prejudice to any party to include the remainder of the 2008 funding requests and the 2009 funding requests in this review.

At the initial time of the denial, District 6 understood Net56's practices to be under investigation by USAC. District 6 understood that the denials for funding years 2008 and 2009 were ultimately a universal denial of all funding where Net56 was a provider. As a result, District 6 believed that it would appear to USAC that District 6 was siding with Net56 and their actions if they had filed a timely appeal. In fact, as a result of the denials, District 6 reviewed the terms of the prior relationship with Net56 and determined to initiate litigation at that time.

However, and more importantly, Net56 shielded information from District 6 throughout the process, which made it difficult if not impossible for District 6 to file an appeal for the Funding Years 2008 and 2009 denials. During July and August of 2009, District 6 began to request information from Net56 in an attempt to reconstruct prior events, and determine what had happened to nearly \$700,000.00 of reimbursements which had never been turned over to the

District. The initial investigation lead to Net56 paying approximately \$334,000.00 back to District 6 as BEAR reimbursements. (See Exhibit H, copies of three checks received in July and August of 2009).

Furthermore, District 6 was faced with the significant issue of cost effectiveness. District 6 inquired as to Net56's billing practices, and essentially had no independent means to verify the actual costs to Net56 and their billing structure. In fact, Net56 did not submit this information to anyone until their counsel filed correspondence with the Commission dated July 31, 2012. (See Exhibit I). This was the first time that Net56 had delivered this information to any third party as far as District 6 knows, and furthermore, this justification was never directly provided to District 6, despite the fact that there was on going litigation with Net56 at the time and requests for such documents were made in discovery. District 6 only discovered these filings while reviewing the Commission's orders attached at Exhibits B, C and D, as it was referenced therein.

As further evidence of the lack of information that was within the District's control, on September 22, 2009, John Ahlgrim, Superintendent for District 6, wrote to Net56 requesting:

- 1) Any amendments, correspondence or any other written communication demonstrating that District 6 had requested an upgrade in services.
  - 2) An engineering study that demonstrated that the District required an increase in bandwidth.
  - 3) Documentation as to costs associated with the increased services; and,
  - 4) Copies of Forms 471 and Item 21 attachments for Funding Years 2007, 2008 and 2009, as the District could not retrieve them.
- (See Exhibit J, a copy of the September 22, 2009, correspondence.)

On November 12, 2009, District 6 again made certain requests to Net56, Inc. in an attempt to comply with the USAC rules and pending requests for information, and to prepare for the eventual possibility of needing to file an appeal. At that time, District 6 requested:

- (1) A chart that differentiates for us the eligible and ineligible services, and accompanying costs, that are covered under the first contract between Net56 and District 6.
  - (2) A report detailing the bandwidth utilization in District 6. Please differentiate between bandwidth in, out and between buildings within the District.
- (See Exhibit K, a copy of the November 12, 2009, correspondence).

Net56, failed to provide the information requested. Therefore, on December 4, 2009, District 6 again wrote to Net56 making these same requests for information. (See Exhibit L, a copy of the December 4, 2009, correspondence.) Again, Net56 failed to provide the requested information to the District.

Therefore, as USAC has made these appeals timely by their COMAD requests, and that District 6 was never provided all the information they felt was required to file a timely appeal by Net56, the Commission should waive the sixty day rule, and accept these appeals as timely. Furthermore, District 6 did not want to give the appearance to USAC that they were somehow

complicit in improper activities by their service provider at the time, and now having the Commission's reversal of USAC's prior decisions involving Net56, it is proper to allow District 6 to file this response as timely.

### **III. Statement Of Facts.**

Zion Elementary School District 6 is located in Northern Illinois and is one of the poorest school districts in Illinois. District 6 spending per pupil is far below the Illinois State average, and 75% of the student population comes from low income households. (See Exhibit M). Further, District 6's E-Rate discount rate in 2005 was 82% and, in 2008, District 6 reached the 90% discount rate.

Net56 first contacted District 6 sometime in 2004 with a plan to outsource their entire Information Technology Department. Bill Spakowski, the salesman for Net56 who sold District 6 this technology solution, stated at his discovery deposition that the first time he remembered visiting District 6 was sometime in January of 2005. (See Exhibit N, Page 34). Mr. Spakowski testified that he identified District 6 as a potential sale because it fit a particular sales profile: "Potentially a high E-Rate district that would be able to take advantage of the E-Rate eligible services to provide a better solution for the school district." (See Exhibit N, Pages 70-71)

Mr. Spakowski further testified that he first learned about E-Rate availability to school districts in the fall of 2004. (See Exhibit N, Page 30). In reviewing the eligible service list in USAC, he determined that E-Rate created a sales opportunity for customers whom Net56 had not worked with yet. (See Exhibit N, Page 29). Therefore, Net56 targeted District 6 as it enabled Net56 to sell more services to a District because of their high E-Rate discount. District 6 was the first District Spakowski sold based on this marketing plan. (See Exhibit N, Page 33).

Don Robinson was the assistant superintendent of business for District 6 in 2004 and 2005 but is currently employed by Net56 as an operations manager. (See Exhibit O, Pages 12 and 29). Mr. Robinson lead the evaluation of bids and the selection process for District 6 in 2005. (See Exhibit P, correspondence drafted by Don Robinson dated April 27, 2009). Net56 delivered to District 6 a full quote for their products and services dated January 19, 2005. (See Exhibit Q, a copy of the January 19, 2005, quote.). In that document, Net56 claims "Net56 is a(n) eligible service provider therefore providing services for which applicants may seek E-Rate discounts." (See Exhibit Q, Page 6). Net56 also outlined a number of ways in which retaining Net56 was "Cost Effective with Immediate Cost Savings." (See Exhibit Q, Page 6). This quote further identified a Monthly Service Fee of \$29,095.00, and stated that \$17,000.00 of same met Priority One Reimbursement, with the remainder meeting Priority Two Reimbursements. (See Exhibit Q, Page 12). This document demonstrated how Net56 was cost effective in comparison to the District's current environment, with nearly \$200,000.00/year in savings. (See Exhibit Q, attachments)

Mr. Robinson signed a document entitled "Zion School District 6 Internet Access Quote", which was drafted by Net56. The document is dated February 15, 2005 and was signed by both Bruce Koch (the President of Net56) and Mr. Robinson. It provides that Net56 would provide WAN/Internet Access, Firewall, Web Hosting, and Email Local and Web at a monthly cost of \$17,000.00 and a yearly cost of \$204,000.00. It also breaks down the costs associated with the

various services. (See Exhibit R, Zion School District 6 Internet Access Quote, attached). It became the standard operating procedure to execute this Internet Access Quote in subsequent filing years, which became the basis for Priority One funding requests. (See Exhibit S, Internet Access Quotes signed for Funding Years 2006, and 2007).

The Board of Education thereafter signed and ratified a contract between the parties on February 28, 2005. This included the contract and finance agreement, which required District 6 to pay a monthly fee of approximately \$30,000.00 per month. (See Exhibit T.) This contract was the contract which was the basis for Priority One Funding, when read together with the internet access quote for that particular year. This agreement also included a financing arm. (See Exhibit U).

Between 2005 and 2009, USAC allowed a total of \$755,406.00 in BEAR reimbursements to District 6.

#### **IV. Analysis.**

##### **A. The DNS/DHCP Server Eligibility as Priority One: District 6 relied upon the expertise of Net56 in providing E-Rate eligible equipment and services as well as communications with USAC.**

Based on the District's knowledge and understanding, the DNS/DHCP Server was specifically related to Net56's ability to provide Internet Access to District 6 and it was not used for any ineligible Priority One purpose. Unfortunately, District 6 is incapable of demonstrating the specifications of the 2008-2009 network at this time, as all the equipment which Net56 had been providing in 2008-2009 was removed with the termination of Net56 as District 6's service provider. District 6 did not retain any of this equipment, nor did it ever own any of this equipment. See *The Tennessee Order*, FCC 99-216, Para. 40. (August 11, 1999).

During the time that Net56 was providing IT services to the District, it is the District's understanding that the servers were never used for ineligible purposes. Net56 provided District 6 with an initial Internet Access Quote which specifically line-itemed each and every Priority One service which Net56 was to provide. In this document, under the heading of WAN/Internet Access, Net56 indicated that they would be supplying 1 DNS/DHCP Server for all seven District 6 buildings, and that this equipment would be required for the providing of these services. (See Exhibit R.) These servers were the start point for Net56's delivery of Internet Access Service. (See Exhibit R). See *The Tennessee Order*, FCC 99-216, Para. 38.

District 6 relied upon the information being provided by Net56 regarding which specific technical devices were eligible for E-Rate funding, including the Internet Access Diagram (Exhibit V), and there was nothing on the face of the contracts and quotes from Net56 that indicated that the DNS/DHCP Server was being used in an ineligible manner or for an ineligible purpose.

Furthermore, USAC previously questioned District 6 on the use of the DNS/DHCP Server. USAC advised that the request for funding for the DNS/DHCP Server appeared to be Internal Connections, and requested a configuration diagram so that USAC could make a

decision. The District provided the requested diagram and answered all questions posed regarding the use of the Server, after which the funding was allowed (See Exhibits V and W.) District 6 then relied upon these decisions and inquiries made by USAC.

Therefore, the facts demonstrate that the DNS/DHCP Server had been previously investigated, and the District responded appropriately. Further, it is unclear why there has been a reversal in the decision by USAC more than five years after the fact. USAC vetted the issue in 2005, and the District relied upon this vetting. Furthermore, at no time did District 6 own or use the DNS/DHCP

Servers for telecommunications services; they were only used to provide Internet access services. *The Tennessee Order*. FCC 99-216. Para. 30.

**B. While It May Have Been Appropriate For USAC To Identify And Apply Discounts For In Eligible E-Rate Services, The Entire Requests Should Not Have Been Denied As District 6 Believed To Be Implementing The Most Cost Effective Solution.**

USAC reviewed each FRN applied for in funding years 2008 and 2009, and identified specific services which were not E-Rate Eligible. USAC then proceeded to reduce the requested amounts by those amounts of money. However, USAC then took the next extraordinary step and declared the entire funding request to not be cost effective.

Correspondence from Don Robinson, a current employee of Net56, outlines his reasons for going with Net56 at the time and outsourcing the District's IT department. (Exhibit P). He provided some comparison documents for Web and E-Mail Hosting and demonstrated a savings of \$19,000. Further, Net56 was more cost-effective compared to two other providers, Microsoft and 123 Together. Additionally, Net56 provided the cheapest for Firewall Service when compared to four other providers. (See attachments to Exhibit P).

The FCC has stated, "We recognize that all service providers include within their prices to customers some amount of the cost of building facilities to provide the service. Indeed, by way of analogy, we have allowed common carriers to include within their rates to customers, some amount of the cost of the facilities used to provide such services to customers." *The Tennessee Order*, FCC 99-216. Para. 29 (August 11, 1999). Therefore, it must be assumed that the analysis that USAC used in determining cost-effectiveness was improperly stringent.

The record demonstrates that the cost of the Net56 solution was taken into account, and it was compared to other providers. Furthermore, the cost and potential cost savings for the District appears to be the only reason why Net56 was ultimately contracted with by District 6. Don Robinson felt that outsourcing was the only available option to upgrading the District's "poor state of technology" at the time. (See Exhibit P, Page 2). As stated earlier, District 6 is a relatively poor district and could not have afforded any other solution except one that was cost-effective.

Furthermore, Net56 provided documentation to District 6 demonstrating how the Net56 solution was the most cost effective choice. (See Exhibit Q). As stated in the March 19, 2012



Order of the FCC, File Nos. SLD-459333, et al., CC Docket No. 02-6, the cost effectiveness of a funding request is dependent on the District's circumstances. In the present case, Net56 demonstrated how their product was cost effective when compared to what the District had previously in place. (See Exhibit Q).

District 6 did take into account the cost of the services which were being provided and made a well informed decision as to the cost-effectiveness of the Net56 Solution. Additionally, USAC never raised any prior concern as to the cost-effectiveness of the solution until the final year of the contract, as it provided funding for the previous years. This is not a situation where there is evidence of abuse or fraud on the part of District 6.

Finally, the FCC in Harrison, Posen-Robbins and Country Club Hills, reviewed and overturned USAC's decision on cost-effectiveness. In Harrison, the FCC points out that Net56 described its services to all of their districts and commercial clients as a centralized solution that housed most of the equipment at the Net56 location. Net56's solution was described as "robust and reliable" that used specific switches and firewall software for all of its applicants. Net56 demonstrated that their pricing differed based on the needs of the client. (Exhibit C, paragraph 12)

Net56 demonstrated that USAC's solution for cost-effectiveness severely understates the costs associated with the Net56 solution. USAC failed to include costs for licenses, load balancers, additional bandwidth, obsolete equipment, hiring personnel and training personnel to operate, monitor and maintain purchased equipment. (Exhibit C, paragraph 12) In Posen-Robbins the Commission further noted Net56's argument that Net56's leased solution was much more cost effective than the proposed one by USAC. (Exhibit B, paragraph 7). These same finding were also made in the Country Club Hills matter. (Exhibit D, paragraph 5)

Further, in all of these decision the Commission rejected USAC's assertion that the costs were two to three times the estimated commercial market price as USAC suggested in their denials for funding. (Exhibit B, paragraph 7; Exhibit C, paragraph 12; and Exhibit D, paragraph 5)

Therefore, Precedent requires that USAC overturn their decision on this issue as well. While the Commission has not provided a bright line test for all cases, it has certainly provided a bright line test for this case, as these are all Districts that were being serviced by Net56. As the Harrison order points out, Net56 provided documentation on their pricing for all of their districts. (See Exhibit I, a copy of the documentation provided by Net56).

### **C. USAC Did Not Review The Correct Contracts When The 2008 and 2009 Funding Year Denials Were Made.**

In USAC explanation of additional reasons for the denial of funds for years 2008 and 2009, USAC relies on the wrong contract. USAC cites to and recites terms and conditions of a contract entered into in February of 2006; however, the appropriate contract for review is the contract attached hereto at Exhibit Q. This contract gave rise to the relationship and was the ultimate basis for all funding requests that were made to USAC. The February 2006 contract was a second contract entered into between the parties, which the parties refer to as the "Portal

Agreement." No funding was ever requested from USAC under the terms of the February 2006 contract.

Furthermore, Exhibit T itemizes a monthly cost of \$30,830.12. Of this \$30,830.12, the parties understood the agreement to mean that the amount indicated in the Internet Access Quote was for monthly Priority One E-Rate services (See Exhibits R and S). This is further supported by the Net56 proposal of January 19, 2005 which includes the Priority One and Priority Two Breakdown. (Exhibit Q) There is no contention by any party that District 6 did not pay this monthly amount. In fact, District 6 made each and every payment under the terms of the agreement and has provided proof, attached. (Exhibits X & Y).

The Internet Access Quotes identified the Priority One eligible services: WAN/Internet Access, Firewall, Web Hosting, and Email Local and Web. These services are further itemized based on various components that were required to provide those services. These itemizations demonstrate compliance with USAC requirements to receive E-Rate funding. Therefore, District 6 did not receive any free services and made all payments under the agreement.

Furthermore, In the Harrison School District case, the FCC found that Harrison "did have signed contracts in place prior to filing its FCC Form 471." (Exhibit C) The basis for this conclusion is demonstrated in the request to review documentation that was submitted by counsel to the FCC. (See Exhibit I) Net56 submitted additional documentation, as Zion did in this case, demonstrating that there were contracts in place prior to the filing of FCC Form 471. (See Exhibit Z) In Zion's case, that document can be found at Exhibits R and S.

Therefore, the District demonstrated that a proper contract for eligible services was in place when FCC Form 471 was filed.

**D. That the funding did not include eligible and ineligible services; the services were cost-allocated.**

As to this issue, the documentation present in this case is identical to the documentation presented by Net56 in the three other cases which the FCC has ruled upon. In the Country Club Hills case, the FCC wrote, "The record also demonstrates that Country Club Hills paid its share of the non-discounted portion of eligible services, in accordance with the one year E-Rate contract. As with the other Net56- related appeals, Net56 explains that it used a financial company, Millennium Leasing & Financial Services, Inc., to facilitate payments from Country Club Hills to Net56 for E-Rate eligible services. The record shows that Country Club Hills was required to pay Millennium for eligible and ineligible services and goods." This is the same financial arrangement that existed in this case. (Exhibit D, paragraph 3). Herein, the financing agreement is found at Exhibit U.

In Harrison, the FCC wrote, "if USAC had considered the correct E-rate contract and accompanying documentation which showed the price allocations for eligible and ineligible services it would have determined Harrison did pay its share for eligible services." (Exhibit B, paragraph 8) Again, the FCC reviews the financial arrangement which was also present in this case, and determines that the USAC decision was incorrect. In Posen-Robbins, the FCC again

notes that Posen-Robins did have E-Rate contracts with Net56 which allocated eligible from ineligible services. The record also demonstrates that Posen-Robbins paid its share of the non-discounted portion of the eligible services in accordance with the one year E-Rate contracts.. (Exhibit B, paragraph 4)

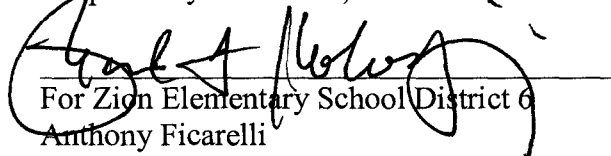
In the present case, these one year contracts as the FCC is referring to them can be found at Exhibits R and S. This combined with the other contracts presented as well as the canceled checks and invoices, demonstrate that Zion also followed the program rules and the decision of USAC should be reversed.

## **V. Conclusion And Prayer For Relief.**

Zion Elementary School District 6 requests that the Commission reverse and remand the decision of USAC for Funding Years 2008 and 2009 and approve the requests. District 6 relied upon the claimed expertise of Net56 in providing E-Rate eligible equipment and services and on additional representations made by USAC. District 6 received no "free" services and has demonstrated same with the documents submitted. District 6 additionally implemented a cost-effective strategy in selecting Net56, made all payments required of them under the Contract, and further demonstrated that USAC did not review the proper contract when they made their funding denials for years 2008 and 2009.

District 6 services a low income community and attempted to follow each and every rule and regulation of USAC and the E-Rate process. In contracting with Net56, District 6 attempted to provide a better educational environment for its students. Indeed, the E-rate program was designed for school districts just like District 6 to provide better access to the Internet for their students. District 6 respectfully requests that the decision be overturned for the reasons stated and argued above.

Respectfully Submitted,



For Zion Elementary School District 6

Anthony Ficarelli

Stacey Senezcko

Richard Kolodziej

Hinshaw & Culbertson, :LLP

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# EXHIBITS





**Universal Service Administrative Company**  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2009-2010**

December 05, 2012

Anthony Ficarelli  
Hinshaw & Culbertson LLP  
10 East Scranton Ave  
Lake Bluff, IL 60044

Re: Applicant Name:	ZION SCHOOL DISTRICT 6
Billed Entity Number:	135356
Form 471 Application Number:	690016
Funding Request Number(s):	1890106, 1890232, 1890293, 1890346, 1890373
Decision Letter Date:	February 02, 2010
Date Appeal Postmarked:	October 31, 2012
Your Correspondence Dated:	October 24, 2012

Our records show that your appeal was postmarked more than 60 days after the date your Funding Commitment Decision Letter was issued, as shown above. Federal Communications Commission (FCC) rules require applicants to postmark appeals within 60 days of the date on the decision letter being appealed. FCC rules do not permit the Universal Service Administrative Company (USAC) to consider your appeal.

If you believe there is a basis for further examination of your application, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be POSTMARKED within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

Schools and Libraries Division  
Universal Service Administrative Company

cc: Tony Demonte



**Universal Service Administrative Company**  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2008-2009**

December 05, 2012

Anthony Ficarelli  
Hinshaw & Culbertson LLP  
10 E. Scranton Ave  
Lake Bluff, IL 60044

Re: Applicant Name:	ZION SCHOOL DISTRICT 6
Billed Entity Number:	135356
Form 471 Application Number:	634543
Funding Request Number(s):	1755454, 1755495, 1755527
Decision Letter Date:	April 07, 2010
Date Appeal Postmarked:	October 31, 2012
Your Correspondence Dated:	October 24, 2012

Our records show that your appeal was postmarked more than 60 days after the date your Funding Commitment Decision Letter was issued, as shown above. Federal Communications Commission (FCC) rules require applicants to postmark appeals within 60 days of the date on the decision letter being appealed. FCC rules do not permit the Universal Service Administrative Company (USAC) to consider your appeal.

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Schools and Libraries Division  
Universal Service Administrative Company

cc: Tony Demonte





Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Review of	)	
Decisions of the	)	
Universal Service Administrator by	)	
	)	
Net56, Inc.	)	File Nos. SLD-602374, 685333
Palatine, IL	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: December 4, 2012**

**Released: December 4, 2012**

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Consistent with precedent,<sup>1</sup> we grant two requests from Net56, Inc. (Net56) seeking review of decisions by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program) to deny funding from Posen-Robbins School District 143.5's (Posen-Robbins) applications for funding years 2008 and 2009.<sup>2</sup> For both funding years, USAC found that in selecting Net56 to provide Internet access, firewall services, web and email hosting services, and basic maintenance, Posen-Robbins violated multiple Commission rules.<sup>3</sup> With respect to Posen-Robbins's funding requests for Internet access and basic maintenance of

<sup>1</sup> See, e.g., *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26431 para. 53 (2003) (*Ysleta*) ("The Commission has determined that seeking competitive bids for eligible services is the most efficient means for ensuring that eligible schools and libraries are fully informed of their choices and are most likely to receive cost-effective services"); *Request for Review by Macomb Intermediate School District Technology Consortium of the Decision of the Universal Service Administrator*, CC Docket No. 02-6, Order, 22 FCC Rcd 8771, 8772 (2007) (*Macomb*) (applicants must select the most cost effective service offering); *Request for Review of Decisions of the Universal Service Administrator by Net56, Inc.*, CC Docket No.02-6, Order, DA 12-1792 (Wireline Comp. Bur. rel. Nov. 7, 2012) (finding that the applicant, Harrison School District 36, properly allocated costs between E-rate eligible and ineligible services, paid its non-discounted share for services, and selected cost-effective services, *inter alia*) (*Harrison School District 36 Order*).

<sup>2</sup> See Appendix. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c) (2012).

<sup>3</sup> See Letter from USAC, Schools and Libraries Division, to Net56, Inc. (dated June 3, 2010) (regarding Posen-Robbins's funding year (FY) 2008 FCC Form 471 application number 602374, funding request numbers (FRNs) 1724807 and 1724886 ) (Posen-Robbins FY 2008 Funding Commitment Decision Letter (FCDL) (denying funds for FY 2008); Letter from USAC, Schools and Libraries Division, to Tarra Batts, Posen-Robbins School District 143.5 (dated June 3, 2010) (regarding Posen-Robbins FY 2008 FCC Form 471 application number 602374, FRNs 1724807 and 1724886) (FY 2008 Further Explanation of Administrator's Funding Decision); Letter from USAC, Schools and Libraries Division, to Net56, Inc. (dated Mar. 9, 2010) (regarding Posen-Robbins FY 2009 FCC Form 471 application number 685333, FRNs 1908586 and 1908687) (Posen-Robbins FY 2009 FCDL) (denying funds for FY 2009); Letter from USAC, Schools and Libraries Division, to Paul B. Hudson, Counsel for Net56, Inc. (dated

internal connections, USAC found that the contract Posen-Robbins signed with Net56 included ineligible products and services and did not cost allocate them.<sup>4</sup> USAC also concluded that Posen-Robbins failed to pay its discounted share for eligible services.<sup>5</sup> USAC made similar findings for Posen-Robbins's funding requests for firewall, web hosting, and email services, and also found that Posen-Robbins failed to select cost-effective eligible services.<sup>6</sup>

2. Based on our review of the record,<sup>7</sup> we find that Posen-Robbins did cost allocate ineligible from eligible services and did pay its discounted share for eligible services. We also find that Net56 adequately demonstrated that the costs for the products and services in the funding requests were reasonable based on Posen-Robbins's circumstances and were therefore cost effective under Commission rules.<sup>8</sup> We therefore grant and remand Net56's requests to the extent provided below.

3. In its decisions to deny funding to Posen-Robbins, USAC found that the contract between Posen-Robbins and Net56 failed to allocate costs between eligible and ineligible services.<sup>9</sup> It is uncontested that Posen-Robbins provided to USAC a five-year Master Services Agreement (MSA) it signed with Net56 on January 28, 2008 that described both ineligible and eligible services without cost allocations.<sup>10</sup> Net56 explains that the MSA provided by Posen-Robbins listed services Net56 could offer to Posen-Robbins, but did not obligate Posen-Robbins to purchase E-rate services.<sup>11</sup> Instead, Net56

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May 26, 2010) (regarding Posen-Robbins FY 2009 FCC Form 471 application number 685333, FRNs 1908586 and 19088687) (FY 2009 Further Explanation of Administrator's Funding Decision). Subsequently, USAC also denied Net56's appeals of Posen-Robbins's funding year 2008 and 2009 funding denials. See Letter from USAC, Schools and Libraries Division, to Paul B. Hudson, Counsel to Net56, Inc. (dated Jun. 15, 2011) (Administrator's Decision on Appeal – Funding Year 2008-2009); Letter from USAC, Schools and Libraries Division, to Paul B. Hudson, Counsel to Net56, Inc. (dated Oct. 26, 2010) (Administrator's Decision on Appeal – Funding Year 2009-2010).

<sup>4</sup> See FY 2008 Further Explanation of Administrator's Funding Decision at 5-7; FY 2009 Further Explanation of Administrator's Funding Decision at 4-5.

<sup>5</sup> See FY 2008 Further Explanation of Administrator's Funding Decision at 6; FY 2009 Further Explanation of Administrator's Funding Decision at 5.

<sup>6</sup> See FY 2008 Further Explanation of Administrator's Funding Decision at 1-4; FY 2009 Further Explanation of Administrator's Funding Decision at 1-3.

<sup>7</sup> The Bureau must conduct a *de novo* review of requests for review of decisions issued by USAC. 47 C.F.R. § 54.723 (2012).

<sup>8</sup> See 47 C.F.R. §§ 54.503(c)(2)(vii), 54.511(a) (2012). See also 47 C.F.R. §§ 54.504(c)(1)(xi), 54.511 (2008). See also *supra* n.1. In this order, we describe the requirements of the E-rate program as they currently exist, but because the order involves applications from funding years 2008-2009, and the Commission has re-organized the E-rate rules since then, where the Commission's rules have changed, we also cite to the relevant rules as they existed during the relevant funding years.

<sup>9</sup> See FY 2008 Further Explanation of Administrator's Funding Decision at 5; FY 2009 Further Explanation of Administrator's Funding Decision at 4.

<sup>10</sup> See, e.g., FY 2008 Further Explanation of Administrator's Funding Decision at 5. See also Request for Review by Net56, Inc. of Decision of the Universal Service Administrator, Posen-Robbins School District 143.5, 2008 Funding Year, FRNs 1724807 and 1724886 at 3 (filed Aug. 5, 2011) (Net56 Appeal FY 2008); Request for Review by Net56, Inc. of Decision of the Universal Service Administrator, Posen-Robbins School District 143.5, 2009 Funding Year, FRNs 1908586 and 1908687, at 3 (filed Dec. 22, 2010) (Net56 Appeal FY 2009).

<sup>11</sup> See Letter of Appeal from Paul B. Hudson, Counsel to Net56 to Schools and Libraries Division-Correspondence Unit at 2-3 (dated Jul. 30, 2010) (Net56 USAC Appeal for FY 2008). See also Net56 Appeal FY 2008 at 3; Net56 Appeal FY 2009 at 4.

explained that the MSA only obligated Posen-Robbins to lease certain equipment.<sup>12</sup> Net56 explained that Posen-Robbins should have provided USAC with the contracts signed on February 1, 2008, and February 10, 2009, which were the applicable E-rate contracts between Net56 and Posen-Robbins for funding years 2008 and 2009.<sup>13</sup> Net56 explains that it submitted these contracts when it appealed to USAC and again in its appeals to the Commission.<sup>14</sup> The actual E-rate contracts covered a year of services each and had costs associated with Internet access, firewall services, web hosting and email services, and basic maintenance as well as documentation that allocated costs of ineligible and eligible services.<sup>15</sup>

4. We find that the record demonstrates that USAC considered the wrong contract in deciding to deny funding to Posen-Robbins for funding years 2008 and 2009. The record shows that Posen-Robbins did have E-rate contracts with Net56 which allocated eligible from ineligible services. The record also demonstrates that Posen-Robbins paid its share of the non-discounted portion of the eligible services, in accordance with the one-year E-rate contracts.<sup>16</sup> Net56 explains that it used a financial company, American Capital Financial Services, Inc. ("ACFS"), to facilitate payments from Posen-Robbins to Net56 for E-rate eligible services.<sup>17</sup> Net56 also states that it sought and received approval from USAC to use financiers, such as ACFS, to accept payments from applicants.<sup>18</sup> The record shows that the contracts required Posen-Robbins to pay ACFS for eligible and ineligible services and goods, and ACFS would then remit part of Posen-Robbins's payment to Net56 for the E-rate eligible services.<sup>19</sup> Because the record reflects this process for payment continued through funding years 2008 and 2009, we find that Posen-Robbins did pay its share for E-rate supported services in accordance with Commission rules.

5. USAC also determined that certain services requested by Posen-Robbins in its requests for firewall services, email services, and web hosting services were ineligible for funding.<sup>20</sup> In its appeals,

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<sup>12</sup> See Net56 USAC Appeal for FY 2008 at 3; Net56 Appeal FY 2008 at 5; Net56 Appeal FY 2009 at 6. See also Master Service Agreement between Net56, Inc. and Posen-Robbins School District 143.5 at Exhibit D (signed Jan. 28, 2008).

<sup>13</sup> See Net56 USAC Appeal for FY 2008 at 2. See also Net56 Appeal FY 2008 at 3-4; Net56 Appeal FY 2009 at 3-5.

<sup>14</sup> See Net56 USAC Appeal for FY 2008 at 2-3; Net56 Appeal FY 2008 at 3-4; Net56 Appeal FY 2009 at 3.

<sup>15</sup> See Net56 USAC Appeal for FY 2008 at Attachment 2-4. See also Net56 Appeal FY 2008 at Ex. F; Net56 Appeal FY 2009 at Ex. C.

<sup>16</sup> See Net56 Appeal FY 2008 at 5-6; Net56 Appeal FY 2009 at 5-7.

<sup>17</sup> See Net56 Appeal FY 2008 at 5-6; Net56 Appeal FY 2009 at 6-7; Net56 USAC Appeal for FY 2008 at 3.

<sup>18</sup> Letter from Paul B. Hudson, Counsel to Net56, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (dated Aug. 15, 2011) ("Net56 . . . walked away from those discussions [with USAC] believing that it had been given a go-ahead"); *id.* at Attachment 2 ("I spoke with the USAC Ombudsman tonight and he said that it does not matter if you have the lease or the lease is assigned . . . Net56 can bill for services as is.").

<sup>19</sup> See Net56 USAC Appeal for FY 2008 at 5 and Attachment 4; Net56 Appeal FY 2008 at Ex. C; Net56 Appeal FY 2009 at 6 and Ex. C.

<sup>20</sup> See, e.g., FY 2008 Further Explanation of Administrator's Funding Decision at 4 (listing the following services as ineligible for funding: "maintenance, operation and repair of school owned equipment located in the Net56 datacenter (co-located equipment), providing anti-virus services on co-located equipment, deployment of anti-virus at desktop, floating on-site support for district Staff to the Desktop, redesign of district website, Tier 1 and Tier 2 helpdesk support to desktop, business continuity plan, application hosting, accounting and student information system application support, SharePoint portal services, providing environmentally controlled atmosphere and generated backup power for co-located equipment and unlimited professional development on applications like

Net56 does not appeal USAC's eligibility determinations about certain of the services at issue.<sup>21</sup> Because Net56 does not contest USAC's determinations with respect to eligibility of these services, we will not address them here.

6. Finally, we address USAC's determination that Posen-Robbins's funding requests for firewall, email and web hosting services were not cost effective.<sup>22</sup> Applicants are required to request discounts based on their reasonable needs and resources and their bids for services should be evaluated based on cost-effectiveness.<sup>23</sup> In the instant matter, Net56 describes its service to Posen-Robbins, as well as other school districts and commercial clients, as a centralized solution that housed most of the equipment at the Net56 location, rather than on the applicant's premises.<sup>24</sup> For firewall services, Net56 provided a "robust and reliable" solution that used a specific switch and firewall software for all of its applicants.<sup>25</sup> Net56 explained that the pricing for services varied per applicant depending on bandwidth and other requirements.<sup>26</sup> For email and web hosting services, Net56 explained that it used a "network-based architecture" and provided costs associated with the equipment needed for these services.<sup>27</sup>

7. USAC determined that Net56's services for firewall, email and web hosting services "exceed[ed] twice the cost of a commercially available solution" and were therefore not cost effective.<sup>28</sup> In reaching this decision, USAC used the MSA provided by Posen-Robbins and calculated costs for five

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Microsoft Office Suite, SharePoint, Class Server"). USAC found that Posen-Robbins asked for a firewall at the Net56 data center, an ineligible location, and for e-mail and web retention and journaling, which were also ineligible for funding. *Id.* at 1-3. *See also* FY 2009 Further Explanation of Administrator's Funding Decision at 1-4.

<sup>21</sup> *See* Net56 Appeal FY 2008 at 6-9; Net56 Appeal FY 2009 at 7-10. Net56 argues that "Net56 is simply asking to be able to receive at least a fraction of the contract price for a service that no one denies has already been provided in full." *Id.* at 8. *See also* Letter from Paul B. Hudson, Counsel to Net56, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (dated Jul. 31, 2012) (Net56 July 31, 2012 Letter) ("Net56 notes that it is not seeking funding for certain functions that had been included in the contract prices but that USAC held were ineligible."). Net56 also states that it "does not concede ineligibility of that [sic.] any part of the services for which funding was sought, but forgoes such argument in this proceeding to expedite the Commission's consideration of the appeals." *Id.* at 2, n.1.

<sup>22</sup> *See* FY 2008 Further Explanation of Administrator's Funding Decision at 1 (concluding that Net56's web hosting solution cost \$240,000 over the course of a five-year contract, whereas USAC estimated the cost of a theoretical premises-based solution to be \$28,500). For firewall services over five years, according to USAC, Net56's solution would cost \$246,900, while USAC's theoretical premises-based solution would cost \$100,000. *Id.* at 3. *Compare* FY 2009 Further Explanation of Administrator's Funding Decision at 2 (concluding that USAC's solution for firewall would cost \$140,000). Also, for e-mail services, USAC claims that Net56's solution would cost \$240,000 over the course of five years, while USAC's theoretical premises-based solution would cost \$28,500. *Id.* at 3. USAC did, however, find that Net56's prices for basic maintenance were cost effective. *Id.* USAC did not undertake a cost-effectiveness review for Net56's prices for Internet access. *Id.*

<sup>23</sup> *See supra* n.1.

<sup>24</sup> *See* Net56 July 31, 2012 Letter at 1-4; Email from Paul B. Hudson, Counsel to Net56, Inc., to Anita Patankar-Stoll, attorney-advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission (dated Sept. 13, 2012).

<sup>25</sup> *See* Net56 July 31, 2012 Letter at 3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *See* FY 2008 Further Explanation of Administrator's Funding Decision at 1-4; FY 2009 Further Explanation of Administrator's Funding Decision at 1-3.

years.<sup>29</sup> USAC found that Posen-Robbins could have purchased equipment for school premises for significantly less than the leased option provided by Net56.<sup>30</sup> To arrive at its cost estimates for the commercially available solution, USAC conducted web searches for the purchase prices of specific network equipment and added an additional fifty percent of that price to estimate charges for installation and maintenance.<sup>31</sup> Net56 argues that USAC's solution for Posen-Robbins severely understates the costs associated with a premises-based solution.<sup>32</sup> For example, Net56 argues that USAC's solution fails to include costs for licenses, load balancers, additional bandwidth, obsolete equipment, hiring personnel, and training personnel to operate, monitor and maintain purchased equipment.<sup>33</sup> If Posen-Robbins wanted to use USAC's solution for firewall services, Net56 argues that Posen-Robbins would have had to purchase additional devices and at least an extra 100 Mbps of bandwidth.<sup>34</sup> Net56 argues that USAC's estimated price for the requested services would have been more expensive, and that Net56's leased solution was much more cost effective for Posen-Robbins.<sup>35</sup> Additionally, Net56 states that USAC mistakenly projected costs for five years, *i.e.* the contract length of the MSA, and instead, should have only used the one-year E-rate contract term.<sup>36</sup> Thus, Net56 argues that the prices for services and products to Posen-Robbins were cost effective.<sup>37</sup>

8. The Commission has not established a bright line test for determining when costs for services are excessive.<sup>38</sup> The Commission has, however, noted that there may be instances where costs for prices or services are so exorbitant that they cannot be cost effective and gave the example of a router that is sold for two to three times the commercial market price.<sup>39</sup> Based on the information before us, that is not the case here, as the services requested by Posen-Robbins were not two to three times the estimated commercial market price.

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<sup>29</sup> See FY 2008 Further Explanation of Administrator's Funding Decision at 1-4 (using the Posen-Robbins School District 143.5 – Net56, Inc. Master Service Agreement and Master Lease Agreement, which was signed January 28, 2008). See also FY 2009 Further Explanation of Administrator's Funding Decision at 1-3.

<sup>30</sup> See FY 2008 Further Explanation of Administrator's Funding Decision at 1-4; FY 2009 Further Explanation of Administrator's Funding Decision at 1-3.

<sup>31</sup> See *id.*

<sup>32</sup> See Email from Paul B. Hudson, Counsel to Net56, Inc., to Anita Patankar-Stoll, attorney-advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission (dated Sept. 13, 2012).

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*

<sup>35</sup> See Net56 July 31, 2012 Letter at 3.

<sup>36</sup> See *id.*

<sup>37</sup> See Net56 July 31, 2012 Letter at 2.

<sup>38</sup> See *Ysleta*, 18 FCC Rcd at 26432, para. 54 (“The Commission has not, to date, enunciated bright-line standards for determining when particular services are priced so high as to be considered not cost-effective under our rules.”)

<sup>39</sup> See *id.*

9. In this case, we find first that the record supports a determination that Posen-Robbins followed the Commission's rules in conducting its bidding and selection process.<sup>40</sup> Second, we are not persuaded that USAC took into account all the relevant costs when estimating the cost of a premises-based solution compared to Net56's leased solution for Posen-Robbins. Third, the record reflects that Net56 complied with the Commission's rules regarding lowest corresponding price, which requires service providers to provide applicants with prices no higher than the lowest price that it charges to similarly-situated non-residential customers for similar services.<sup>41</sup> Net56 provided examples of prices for its commercial customers for Internet access, web and email hosting, and firewall services and compared them to the comparable prices that it charged to Posen-Robbins.<sup>42</sup> Based on these factors and the record before us, we conclude that USAC erred in finding that the services Posen-Robbins purchased were not cost effective.<sup>43</sup>

10. Lastly, on our own motion, we waive section 54.507(d) of the Commission's rules and direct USAC to waive any procedural deadline, such as the invoicing deadline, that might be necessary to effectuate our ruling.<sup>44</sup> We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause the applicant to miss the program's subsequent procedural deadlines in that funding year.

11. Therefore based on our review of the record, we grant the requests of Net56 with respect to Posen-Robbins's funding year 2008 and 2009 E-rate applications. On remand, we direct USAC to process the grant using the services and pricing found in Posen-Robbins's E-rate contracts dated February 1, 2008, and February 10, 2009, and reduce the funding request by the amount of any ineligible charges consistent with this order. To ensure that the underlying applications are resolved expeditiously, we

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<sup>40</sup> See 47 C.F.R. § 54.503 (2012) (requiring applicants to seek competitive bids to procure E-rate services and providing instruction on the protocol for the bidding process). See also 47 C.F.R. § 54.504 (2008). See, e.g., FCC Form 470, Posen-Robbins School District 143.5 (posted Dec. 5, 2007); Letter from Posen-Robbins School District 143.5 to USAC (dated Mar. 15, 2010) (describing the bids received for FRNs 1724886 and 1724807 for FY 2008 and the criteria used to evaluate those bids, including "cost, understanding of needs, previous experiences, qualifications, financial stability, and references"); Posen-Robbins School District 143.5 Business Office Report, Board Meeting (dated Jan. 9, 2008) ("Based on all applicants/bidders that have submitted quotes for the services requested by the [D]istrict, Net56 has addressed our needs adequately. They have demonstrated their ability to provide top level service at a reasonable price."). See also Net56 Appeal FY 2008 at 2-4 (stating that for FY 2008, Posen-Robbins and Net56 entered into an E-rate contract on February 1, 2008, and Posen-Robbins posted its FCC Form 471 on February 6, 2008); Net56 Appeal FY 2009 at 3-5 (stating that for FY 2009, Posen-Robbins and Net56 entered into a contract on February 10, 2009, and Posen-Robbins posted its FCC Form 471 on February 12, 2009).

<sup>41</sup> See 47 C.F.R. § 54.511 (b) (2008) ("Providers of eligible services shall not charge schools, school district, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding prices is not compensatory. Promotional rates offered by a service provider for a period of more than 90 days must be included among the comparable rates upon which the lowest corresponding price is determined."). See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, 13 FCC Rcd 2372, para. 133 (1997).

<sup>42</sup> See Net56 July 2012 Letter at 4-5.

<sup>43</sup> See, e.g., *Harrison School District 36 Order* at 8, para. 14 (explaining how Net56 demonstrated that its costs for products and services were not unreasonable based on the needs and circumstances of Harrison School District 36 and that USAC erred in finding that the services were not cost-effective). We note that while we review the rationale for USAC's determinations, nothing in the *Harrison School District 36 Order* should be read to suggest that USAC bears the burden of proof.

<sup>44</sup> 47 C.F.R. § 54.507(d) (2012) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

direct USAC to complete its review of each application listed in the appendix and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the underlying applications. We direct USAC to discontinue recovery actions relating to requests for review that are addressed herein. At this time, we find that there is also no evidence of waste, fraud or abuse in the record.

12. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), the requests for review filed by Net56, Inc. as listed in the Appendix ARE GRANTED and the underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

13. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that section 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d), IS WAIVED for the parties to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

## APPENDIX

Petitioner	Application Number	Funding Year	Date Request for Review Filed
Net56, Inc. Palatine, Illinois (Posen-Robbins School District 143.5 Posen, Illinois)	602374 685333	2008 2009	Aug. 5, 2011 Dec. 22, 2010



